

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION**

Angelo Ham,	)	
	)	Civil Action No.: 6:18-cv-01673-JMC
Plaintiff,	)	
	)	
v.	)	<b>ORDER AND OPINION</b>
	)	
M. Stephon, <i>Warden, Individual Capacity</i> ;	)	
Colonel Wells, <i>Individual Capacity</i> ;	)	
D. Williams, <i>Unit Manager, Individual</i>	)	
<i>Capacity</i> ; Officer Galloway, <i>Individual</i>	)	
<i>Capacity</i> ; Officer Smithtana, <i>Individual</i>	)	
<i>Capacity</i> ; E. Williams, <i>Sgt., Individual</i>	)	
<i>Capacity</i> ; and Dr. John McRee,	)	
<i>Individual Capacity</i> ,	)	
	)	
Defendants.	)	
	)	

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Plaintiff Angelo Ham (“Plaintiff”) brings this action pursuant to 28 U.S.C. § 1915 and 42 U.S.C. § 1983. (ECF No. 1 at 4.) Plaintiff, proceeding *pro se* and *in forma pauperis*, filed the action alleging the use of excessive force, as well as cruel and unusual punishment, in violation of 28 U.S.C. § 1983. (*Id.*) Plaintiff claims he was injured and denied prompt medical treatment, thus depriving him of his rights under the Eighth Amendment to the United States Constitution. (ECF No. 1-2.) For the reasons set forth herein, the court **ACCEPTS** the Magistrate Judge’s Report and Recommendation (“Report”) (ECF No. 39) and **DISMISSES** Plaintiff’s Complaint (ECF No. 1) as to Defendants Galloway and Smithtana without prejudice.<sup>1</sup>

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<sup>1</sup> The Report only addressed dismissal of Defendants Galloway and Smithtana due to the failure of Plaintiff to properly serve Defendants Galloway and Smithtana with the Summons and Complaint. The remaining Defendants are still subject to this action.

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

The Report sets forth the relevant facts (ECF No. 39 at 1-2), which this court incorporates herein without a recitation, except as to the facts pertinent to the analysis of Plaintiff's Objections. As brief background, Plaintiff filed an initial Complaint on June 18, 2018. (ECF No. 1.) By order dated July 26, 2018, Plaintiff was given until August 16, 2018, to provide the proper mailing addresses for service of process against Defendants Galloway and Smithana. (ECF No. 19.) The court then granted three further extensions to Plaintiff to provide this information. (ECF Nos. 22, 28, 33.) By November 14, 2018, Plaintiff failed to provide the requested service documents, and, therefore, failed to comply with an order of this court. Therefore, the Magistrate Judge issued a Report and Recommendation recommending the court dismiss Plaintiff's Complaint as to Defendants Galloway and Smithana without prejudice. (ECF No. 39 at 3.) This review considers Plaintiff's Objections to the Report, filed December 3, 2018. (ECF No. 44.)

## **II. STANDARD OF REVIEW**

The Magistrate Judge's Report is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court, and the recommendation has no presumptive weight. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The responsibility to make a final determination remains with this court. *Id.* at 271. As such, the court is charged with making *de novo* determinations of those portions of the Report to which specific objections are made. *See* 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3). The court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. *Id.* Additionally, as Plaintiff is a *pro se* litigant, the court is required to liberally construe his arguments. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978).

### III. DISCUSSION

“The purpose of magistrate review is to conserve judicial resources.” *Nichols v. Colvin*, 100 F. Supp. 3d 487, 497 (E.D. Va. 2015). Generally, a party’s objection to a magistrate judge’s report must be “specific and particularized” in order to facilitate review by a district court. *United States v. Midgette*, 478 F.3d 616, 621 (4th Cir. 2007). “An ‘objection’ that does nothing more than state a disagreement with a magistrate’s suggested resolution, or simply summarizes what has been presented before, is not an ‘objection’ as that term is used in this context.” *Aldrich v. Bock*, 327 F. Supp. 2d 743, 747 (E.D. Mich. 2004). Thus, a *de novo* review is wholly unnecessary for a district court to undertake when a party seeks to rehash general arguments that were already addressed in a magistrate judge’s report. *See Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982); *Jones v. Hamidullah*, No. 2:05–2736–PMD–RSC, 2005 WL 3298966, at \*3 (D.S.C. Dec. 5, 2005).

In the instant case, the court has reviewed Plaintiff’s Complaint (ECF No. 1), Plaintiff’s Motions for Extensions of Time (ECF Nos. 21, 27, 32), Plaintiff’s Motion to Compel (ECF No. 41), Plaintiff’s Objection (ECF No. 44), the Order Denying Plaintiff’s Motion to Compel (ECF No. 45), and the Report (ECF No. 39). After examining all of these documents, the court concludes that Plaintiff’s Objection restates arguments that were addressed by both the Report and the Order Denying Plaintiff’s Motion to Compel. (*Compare* ECF No. 44 at 2-3, *with* ECF No. 39 at 2-3, *and*

ECF No. 45 at 2.) Moreover, Plaintiff’s Objection largely mirrors his Motion to Compel which was denied by the court. (*Compare* ECF No. 44 at 2, *with* ECF No. 41 at 1-2.) As such, a *de novo* review is unnecessary because Plaintiff has “failed to guide the [c]ourt towards specific issues needing resolution .....” *Nichols*, 100 F. Supp. 3d at 498 (holding that a claimant failed to raise specific objections when he repeated arguments raised in his initial brief). This court declines to hear rehashed arguments from Plaintiff. *Orpiano*, 687 F.2d at 47. The court finds that the Report

adequately addresses Plaintiff's Objection and is well-reasoned. *See Fray v. Berryhill*, No. 6:16-2916-TMC, 2018 WL 1224687, at \*5 (D.S.C. Mar. 9, 2018) (adopting a magistrate judge's report in which the court concurred "with both the reasoning and the result"). Therefore, the Report is adopted herein.

#### **IV. CONCLUSION**

After a thorough review of the issues in this case and review of the Report and the record in this case, the court finds that the Report provides an accurate summary of the facts and law and does not contain clear error. Therefore, the court **ACCEPTS** the Magistrate Judge's Report and Recommendation (ECF No. 39) and incorporates it herein. Accordingly, the court summarily **DISMISSES** Plaintiff's Complaint (ECF No. 1) as to Defendants Galloway and Smithtana without prejudice.

**IT IS SO ORDERED.**

A handwritten signature in black ink, reading "J. Michelle Childs". The signature is written in a cursive, flowing style.

United States District Judge

February 6, 2019  
Columbia, South Carolina